

claim 41. Accordingly, claim 41 and claims 4-10 dependent therefrom are submitted to be in proper form for allowance.

Applicants also submitted new claim 42 in Amendment D. However, the Office action lacks any determination of patentability of claim 42. Applicants respectfully request an opinion on the allowability of claim 42.

Response to the Rejection of Claims under 35 USC §103

Claim 1

Claim 1 is directed to an absorbent article comprising:

- an outer cover adapted to stretch upon application of a load by a first amount;

- a liquid and vapor permeable bodyside liner defining a bodyfacing surface and being generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount;

- an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover;
- and

- said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body, the bodyside liner being relatively more resilient when stretched than the outer cover.

Claim 1 is submitted to be non-obvious in view of and patentable over the references of record, and in particular U.S. Patent No. 5,269,775 (Freeland) in combination with U.S. Patent No. 4,710,187 (Boland et al.), in that whether considered alone or in combination the references fail to show or suggest at least the following features recited in claim 1: 1) the outer cover being adapted to stretch upon application of a load by a first amount, and 2) the first amount of stretch of the outer cover being greater than the second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body in the loaded condition of the absorbent body.

Freeland et al. disclose a disposable absorbent article (20) having a resilient topsheet (22) that is longitudinally foreshortened relative to the core (26) and/or the backsheet (24) to create a void space (52) between the core and the backsheet for receiving fecal matter. Column 6, line 67 to column 7, line 3. Thus, the void space (52) is present regardless of any load being applied to the article and regardless of whether the backsheet of the article is stretchable. Indeed, as acknowledged in the Office action, Freeland does not disclose that the backsheet is stretchable. Nor does it even suggest such a feature. Accordingly, Freeland et al. fail to teach or suggest an outer cover adapted to stretch upon application of a load by a first amount.

Consequently, Freeland et al. also fail to disclose or suggest the first amount of stretch of the outer cover being greater than the second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body in the loaded condition of the absorbent body. To the contrary, because the outer cover of Freeland et al. does

not stretch at all the liner of Freeland et al. will stretch more than the outer cover in the loaded condition of the article.

Boland et al. disclose a disposable garment (10) having a stretchable bodyside liner (42), a stretchable outer cover (20) and an absorbent structure (22) disposed between the liner and outer cover. As acknowledged by the Office, Boland et al. do not disclose that the outer cover (20) stretches more than the bodyside liner (42) upon application of a load whereby a gap is formed between the bodyside liner and the absorbent structure (22).

Because Freeland et al. and Boland et al. each fail to disclose or suggest an outer cover that stretches more than the bodyside liner (42) upon application of a load whereby a gap is formed between the bodyside liner and the absorbent structure, a combination of these references also fails to disclose or suggest such a feature.

Moreover, there is no teaching or suggestion found anywhere in the cited references that would motivate one skilled in the art to replace the non-stretchable backsheet of Freeland et al. with the stretchable backsheet of Boland et al. The Office's position is that the motivation for such a modification is that Boland teaches the stretchable backsheet for the purpose of providing a good fit on various sized wearers. However, Freeland et al. expressly teach that their absorbent article addresses the problem of the "differences in the wearer's anatomy which are in contact with the top sheet, and the differences such portions of the anatomy have on the effect of the fit of the disposable article while it is worn...". Column 2, lines 11-16. In particular, Freeland et al. address this problem by dividing the topsheet into trisections, 22F, 22C and

22R, and by making the front trisection (22F) with no elastic extensibility, and the rear and central trisections (22R, 22C) have different orientations of elasticity. Thus, according to the teachings of Freeland, there would be no need to make the backsheet extensible also.

Even more notable is that even if the backsheet of the article of Freeland et al. is modified to be stretchable as taught by Boland et al., there is still no teaching or suggestion that would motivate one skilled in the art to make the backsheet more stretchable than the topsheet in a loaded condition of the article to form a gap between the topsheet and the absorbent core as recited in claim 1. Freeland et al. instead teach that the backsheet and topsheet are initially configured to provide a gap between the topsheet and the backsheet, e.g., by **longitudinally foreshortening** the topsheet relative to the core (26) and/or the backsheet (24). Column 4, line 65 to column 5, line 2; Column 6, line 67 to column 7, line 3. Accordingly, a gap is already present in the article of Freeland et al. regardless of the relative stretchabilities of the topsheet and the backsheet. That is, whether the backsheet is more stretchable or less stretchable than the topsheet, the gap will still be present.

As such, there is no reason why one skilled in the art would make the backsheet of Freeland et al. stretch more than the topsheet because such a stretch differential is entirely unnecessary to form the gap disclosed by Freeland et al.

For the above reasons, claim 1 is submitted to be non-obvious in view of and patentable over the references of record.

Claims 11-22 and 40 depend either directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Discussion of non-addressed claims**Claim 42**

Claim 42 recites, among other elements:

an outer cover adapted to stretch by a first amount upon application of a load;

the bodyside liner being adapted to stretch by a second amount upon application of the load, said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner; and

the bodyside liner being free of connection to the absorbent body, whereby in a loaded condition of the absorbent body a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner.

While not addressed in the Office action, claim 42 is submitted to be patentable over the references of record for reasons similar to claim 1. In particular, like claim 1, claim 42 recites that the first amount of stretch of the outer cover is greater than the second amount of stretch of the bodyside liner. The cited references fail to disclose or suggest such a features as discussed above with respect to claim 1.

Conclusion

In view of the foregoing, favorable consideration and allowance of claims 1 and 4-42 is respectfully requested.

The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard L. Bridge". The signature is fluid and cursive, with the first name "Richard" and last name "Bridge" clearly distinguishable.

Richard L. Bridge, Reg. No. #40,529

SENNIGER POWERS

One Metropolitan Square, 16th Floor

St. Louis, Missouri 63102

(314) 231-5400

RLB/cms

By EFS